UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

———————

Ex parte TRAVIS J. PARRY

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Appeal 2008-004752
Application 09/990,005
Technology Center 2400

———————

Decided:[1] May 27, 2009

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Before JAMES D. THOMAS, LEE E. BARRETT, and CAROLYN D.
THOMAS, *Administrative Patent Judges.*

J. THOMAS, *Administrative Patent Judge.*

DECISION ON APPEAL

———————————

[1] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 C.F.R. § 1.304, begins to run from the Decided Date
shown on this page of the decision. The time period does not run from the
Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1 through 22. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

Appellant's invention relates to improved imaging devices with an embedded webserver that allows the imaging devices to be managed, configured, and upgraded from a web browser. Additionally, the improved imaging devices are adapted to find and/or upgrade other imaging devices on the network. (Spec., Abstract 20, Figures 2 through 4).

Representative Claim

1. An imaging device, comprising:
   a processor adapted for communication with a network using an embedded webserver; and
   a computer-usable media coupled to the processor;
   wherein the processor is adapted to store a configuration for the imaging device on the computer-usable media, where the configuration is input by commands received across the network from a web browser to a management facility resident on the imaging device, such that the management facility is accessible from the network through the embedded webserver;
   wherein the processor is adapted to store a list of other imaging devices on the network on the computer-usable media; and
   wherein the processor is adapted to transmit the configuration to a network address of at least one of the other imaging devices of the stored list.

Prior Art and Examiner's Rejections

The Examiner relies on the following references:

Mixer, Jr.	US 6,693,722 B1	Feb. 17, 2004
		(filed Apr. 13, 2000)
Schlonski	US 2002/0196451 A1	Dec. 26, 2002
		(effective filing, Jun.25, 2001)
Mathieson	US 2002/0143915 A1	Oct. 3, 2002
		(filed Mar. 30, 2001)
Carcerano	US 6,308,205 B1	Oct. 23, 2001
Hawes	US 6,026,436	Feb. 15, 2000

Claims 11 through 13, 15, 16, and 19 through 22 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Schlonski. All remaining claims on appeal stand rejected under 35 U.S.C. § 103. As evidence of obviousness as to claims 1 through 4 and 8, the Examiner relies upon Schlonski in view of Carcerano. While claim 7 is rejected over this combination of references, further in view of Mathieson, claims 5, 6, 9, and 10 are rejected by the Examiner over Schlonski in view of Carcerano, further in view of Hawes. Claims 17 and 18 are rejected under 35 U.S.C. § 103 over Schlonski in view of Hawes. Lastly, claim 14 is rejected under 35 U.S.C. § 103 over Schlonski in view of Mixer. [2]

Claim Groupings

As indicated at the bottom of what appears to be page 1 of the Principal Brief on appeal, arguments are presented in this Brief only as to independent claims 1, 11, 15, and 21, the Brief further indicating that the

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[2] At page 13 of the Answer, the Examiner has withdrawn an outstanding rejection of claims 1 through 22 under the first paragraph of 35 U.S.C. § 112.

remaining dependent claims are not separately argued. Among independent

claims 11, 15, 21 that are rejected under 35 U.S.C. § 102 and with respect to

independent claim 1 that is rejected under 35 U.S.C. § 103, the Brief

essentially argues the common features recited among each of them.

The Brief does not contest the combinability of Schlonski with the

other noted references utilized by the Examiner within 35 U.S.C. § 103 and

does not contest the teachings in these additional references relied on by the

Examiner.

ISSUE

1.   Has Appellant shown that the Examiner erred in finding that the

subject matter of independent claims 11, 15, and 21 are anticipated by

Schlonski and, correspondingly, whether the subject matter of independent 1

would have been obvious to the artisan within 35 U.S.C. § 103 over

Schlonski in view of Carcerano?

FINDINGS OF FACT ("FF")

1. We reproduce here several paragraphs from Appellant's

Specification as filed that relate to admitted prior art:

> [0002]   Computing devices are typically coupled to
> networks in modern computing environments. Networks in this
> definition include fiber optic, wire, wireless, and virtual, such
> as a virtual private network (VPN). In particular, imaging
> devices, such as printers, projectors, displays, and faxes are
> typically networked in modern computing environments. These
> imaging devices are typically set up and configured with a
> built-in user interface or are configured remotely over the
> network. (ll. 1-6.)

[0003]   When being configured over the network, the imaging devices generally require a specialized management facility, program, or protocol to interface with. These specialized management facilities, programs, or protocols are generally referred to herein as management facilities. (ll. 1-4.)

[0005]   Many imaging devices gather usage information and statistics on their use and operation within the network, in addition to allowing for online changing of configuration parameters and upgrades of firmware or software (generally referred to herein as configuration). This usage information, statistics, along with the configuration and upgrade options are generally available to the administrator through the management facility. (ll. 1-6.)

[0007]   Figure 1 details a simplified diagram of a network and imaging device system. Figure 1 includes a local network 100, a router/bridge 102, firewalls 104, a remote network 106, local imaging devices 108, a server 112, a workstation 114, a management facility 116, and a remote imaging device 118. Each local and remote imaging device 108, 118 is coupled to the network with a network interface, contains device configuration information and firmware/software, and gathers it own usage information and statistics, which can include such information as number of pages imaged, number of jobs received, number of copies of jobs received, and numbers of errors. Each imaging device generally includes a processor 103 and a computer-usable media 105 as shown in one of the imaging devices 108. The computer-usable media 105 may include one or more types of media, e.g., nonvolatile memory, magnetic media, optical media, etc., for storage of computer-readable instructions for use by the processor 103 to control operations of the imaging device 108 and for storage of usage data, statistics and other data or information used by the imaging device 108. The processor 103 is adapted for communications across the network 100, typically through a network interface such as a network interface card. The processor 103 may be coupled to the computer-usable media 105 as separate components or the processor 103 and the

computer-usable media 105 may be coupled together as part of
a single component, such as an application-specific integrated
circuit (ASIC) chip.

[0008]   The management facility 116 allows management
and querying of the local and remote imaging devices 108, 118
across the network. Each local imaging device 108
communicates to the management facility 116 across the local
network 100, and router/bridge 102, if necessary. Each remote
imaging device 118 communicates to the management facility
116 across the remote network 106, firewalls 104, and local
network 100.

[0021]   Network devices with an embedded web access
mechanism for user interface functions including a webserver
and a web browser are detailed in U.S. Patent No. 5,956,487
issued to Venkatraman et al. on September 21, 1999, and in
U.S. Patent No. 6, 170,007 issued to Venkatraman et al. on
January 2, 2001, both of which are commonly assigned and
incorporated herein by reference.

The Examiner reproduces the summary of the invention of U.S. Patent

5,956,487 noted in this paragraph at page 16 of the Answer. Appellant's

Specification Paragraph [0023] recognizes prior art browsers and

additionally indicates that "most browsers can be combined with add-in

modules". This paragraph concludes by stating that "browsers and

webservers also allow for downloading or uploading of documents and

binary files."

2. As the Specification pertains to the disclosed and claimed invention
   we reproduce here the following paragraphs:

   [0020]   With a common webserver (HTTP) interface and
   protocol, the need for training, support, and configuration of
   multiple specialized management facilities is simplified as each

imaging devices of the present invention already contain a management facility in the form of the embedded webserver and requires the administrator to only "surf" to the imaging device with a browser to access the management facility. The common HTTP interface and protocol also allow a single specific device, class of device, or even device manufacturer to be managed or communicated to either singly or as a group. (ll. 1-8.)

[0022]   However, HTTP protocols generally involve transferring encoded text, forms, and graphic documents across networks from a document server (i.e., a webserver) to remote recipients for display and input. HTTP reception and document viewing and interaction is generally done with a program called a "browser." (ll. 5-8.)

[0025]   When an administrator manages an imaging device embodiment of the present invention, the administrator first "surfs" to the address of the imaging device on the network with a web browser. Once connected to the embedded webserver of the desired imaging device, the administrator can manage it or upgrade its configuration (configuration parameters, firmware, software, or supplemental information) utilizing the embedded webserver without requiring a specialized imaging device management facility. The command interface of the imaging device, that comprises the imaging device's management facility, is generated by the embedded webserver and displayed on the administrator's web browser.

[0027]   At the management facility of the embedded webserver the administrator can also modify device information and configuration parameters by the modification and submission of HTML forms and inputs via the browser to the embedded weberver of the imaging device. (ll. 1-4.)

[0028]   Additionally, the configuration parameters can be loaded into the imaging device from a file via the embedded webserver management facility. When loading the

configuration parameters, the configuration parameters for convenience can be uploaded to the imaging device directly with the browser. (ll. 1-4.)

[0035]   Imaging device embodiments of the present invention can additionally allow for management of other imaging devices that are similar to itself on the network. After an administrator "surfs" to an imaging device embodiment of the present invention an upgrades or changes the configuration or firmware/software to their satisfaction, the imaging device can be commanded to copy or "clone" all or apart of its current configuration to other similar devices on the network. This migrates some or all the changes or upgrades to selected similar imaging devices on the network.

[0038]   In cloning an imaging device of the present invention to other similar devices, the administrator selects the imaging devices to upgrade from a list of imaging devices present in the imaging device system. This list of imaging devices can either be input from an external source, manually input by the administrator, or "discovered" on the network by the imaging device embodiment of the present invention. The procedures for discovering other imaging devices on a network is well known in the art for many types of devices and communication protocols, and thus will not be covered in this disclosure.

[0039]   Once entered or discovered, the list of other imaging devices can be maintained internally in the device for future reference. Alternatively the list of other imaging devices can be maintained internally across all embodiments of the present invention, on a network server or device, or on a "master" device that would be tasked with storing references for managing imaging devices in the system. After the list is available, the administrator can select some or all of the listed similar imaging devices to configure and/or upgrade, referred to herein generally as "configure".

[0047]   Additionally, the improved imaging devices are adapted to find and/or upgrade similar devices to themselves. The upgrade can transfer the configuration parameters or upgrade files directly from the originating device to the targeted device(s) or simply include a reference to a local or remote secondary network site that contains the configuration or upgrade. Thus the improved imaging devices enable a virtual imaging device management system that can manage a network of other imaging devices.

3.   We reproduce here Appellant's statements made in the paragraph bridging pages 5 and 6 of the Reply Brief:

Appellant is not disputing that printers are known in the prior art having embedded webservers that allow the printer to be managed and configured by surfing to the embedded webserver/management facility of the printer across a network with a browser. Appellant is also not disputing that workstations running management programs, as disclosed in Schlonski et al., are known or that they can present consolidated displays of the printers on a network and allow the Administrator to surf to each printer's internal embedded webserver to manage it.

Page 6 of the Reply Brief repeats the basic position throughout the Brief that the workstation of Schlonski is alleged to be functionally different than the imaging devices of the claimed invention or the printers of that reference, and that there is no disclosure to suggest that the workstation can "surf" across a network to access the management program resident on the workstations. Finally, Appellant further states at the bottom of the page 6 of the Reply Brief:

In view of the foregoing, and as supported in its Amended Appeal Brief filed July 18, 2007, Appellant contends that the management program on the workstation of Schlonski et al. does not require the Administrator to "surf" across a network with a browser to utilize the management program through the

imaging device's embedded web server. As such, claims 1-22
are again patentably distinct from Schlonski et al. and that
Schlonski et al. does not teach or suggest each and every
limitation of Appellant's claims.

4.   Schlonski's Abstract states:

In a system having a plurality of digital printers on a network,
when a newly-installed printer is discovered, new printer's
object ID is used to determine the type (make and model) of
printer. A template printer, of sufficiently similar type, is also
identified on the network. Configuration data is then
automatically copied from the template printer to the new
printer. A central database of configuration data for various
printer types is not required.

Schlonski's brief discussion of prior art patents in paragraphs [0010],

[0011], and [0013] indicate various approaches in the prior art to store a list

of other imaging devices on the network.

5.   We reproduce here significant paragraphs from Schlonski's

disclosure:

[0016]   U.S. Pat. No. 6,026,436, assigned to the assignee
hereof, discloses a method for cloning the configuration of one
printer to another, by means of a web browser model. A
browser is used for obtaining from a first printer an electronic
page, and a server provides the electronic page with suitable
configuration information. The amended electronic page is
then submitted to a second printer.

[0032]   Once all of the desired subnets have experienced
the network discovery such as shown as steps 102-106 [of Fig.
2], there will result a user interface in which all of the known
printers are listed in the display. In a preferred embodiment of
the present invention, this resulting list can be displayed to the
systems administrator on computer 12 [of Fig.1], who in turn
can select individual printers listed therein. When the systems

administrator (SA) thus selects a printer, the point-and-click action thus causes the selected printer to be accessed over network 10, and the web page of the selected printer to appear in the user interface, as shown at step 110 of FIG. 2. Once the systems administrator thus has access to the web page and embedded web server of the selected printer, the system administrator can access, and as necessary alter, any information available to the system administrator through the web site of the particular printer.

[0035]   According to the illustrated embodiment, there is present on the network what is called a "template printer," meaning an already-installed printer of a given known type, the current configuration of which is used to apply to any further printer of that type which exists or subsequently appears on the network. This template printer is identified by the SA, such as shown at step 306 [of Fig. 3], via a user interface on his computer, as will be shown below. In this embodiment, the configuration data for a printer of a given type is retained only at the template printer (incidental to the printer functions carried out by the template printer), and is not retained independently, for any appreciable length of time, at the SA's computer or at any sever. When configuration data is required, the configuration data is obtained from the template printer, such as at step 308, for sending to the new printer.

[0037]   After the desired configuration is sent to the printer(step 316), various straightforward tests can be performed to verify the success of the change in configuration (step 318). The system can then be applied to another printer (step 320), either the next printer to be discovered, or as part of a process of updating the configuration of a large number of printers on the network.

[0038]   A variation of the present method is when the configuration of the template printer is changed, such as at step 310, and the new configuration is desired to be replicated to all other printers of the same type on the network. In such a case, all of the printers of the same type on the network are

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systematically caused to receive the same configuration as the
template printer.

[0040]   In a practical embodiment of the invention, the
steps of obtaining configuration data from a template printer
and sending the data to a new printer are initiated by the
discovery of a new printer on the network, and occur
substantially invisibly to the SA or other user. Alternately, the
steps of sending configuration data to printers of a given type
on a network can be initiated by a change in configuration of a
template printer.

Figure 2 of Schlonski illustrates the flow of a network discovery process for
discovering imaging devices on a network and Figure 3 discloses the details
of the flow logic according to embodiments to which Paragraphs [0032] and
[0035] respectively relate. Figure 4 shows an internet browser and web
interface that an administrator utilizes to "clone" by selecting a printer
among a list of printers to be used as a template printer for cloning other
printers according to the process of Schlonski. Correspondingly, Figure 5 of
Schlonski shows an ability to select printers to be cloned among a list of
printers on the network, where these printers to be cloned are considered
target printers.

PRINCIPLES OF LAW

Anticipation

"A claim is anticipated only if each and every element as set forth in
the claim is found, either expressly or inherently described, in a single prior
art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d
628, 631 (Fed. Cir. 1987). Analysis of whether a claim is patentable over

the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

Obviousness

"What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under *§ 103*." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 419 (2007). To be nonobvious, an improvement must be "more than the predictable use of prior art elements according to their established functions." *Id.* at 417. Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). Therefore, we look to Appellants' Briefs to show error in the proffered prima facie case.

ANALYSIS

In an effort to clarify the record in decision on appeal, we have reproduced extensively Appellant's admitted prior art from the Specification

as filed in FF 1. To insure the reader clearly understands the nature of the subject matter common among the independent claims on appeal, we reproduced in FF 2 as well extensive portions of the Specification as filed relating to Appellant's contribution in the art.

Appellant's Specification Figure 1 illustrates an administrator apparently at a remote location in a management facility connected to a network on which reside parallel imaging devices, each of which includes processor 103 and a computer useable media 105 that stores instructions to control operations of the respective imaging device. Respective programs for each respective imaging device are found in the management facility 116 where the administrator resides. In contrast and in a slight altering of perspective, the browser of disclosed Figure 2 appears to be the location of the administrator that performs some management functions that are unrecited in the claims. The administrator is also not recited in the claims.

This browser is only passively recited in most of the independent claims on appeal and it communicates to each respective webserver or interface device within each imaging device 200 as in Figure 2. As disclosed initially in Paragraph [0020] we reproduced in FF 2, a common webserver interface and protocol resides in each imaging device that is stated to "already contain a management facility in the forum of the embedded webserver". Thus, the administrator needs only to "surf" to that imaging device with the browser to access the management facility within the imaging device. It is noted that Paragraph [0021] of the Specification as filed that we reproduced in FF 1 indicates that it was known in the art that a single device may have both a browser and a webserver within it. Traditionally, a browser would surf the "web" network like the Internet for

particular devices. Rather than just being discussed in detail in the written description of Schlonski that we reproduced in FF 5, the function of the administrator communicating to various imaging devices by means of a browser is illustrated in Figures 4 through 6 of Schlonski, which we discussed briefly at the end of this FF. To the extent that Appellant's Brief and Reply Brief repeatedly argues to be patentable by the mere surfing by a web browser to particular devices, not only does this assertion belie what is well known in the art, apart from the admitted prior art of Appellant, such as is noted in Finding of Fact 1, it is also specifically taught in the configuration modification environment in Schlonski, in his latter Figures at least.

Moreover, Appellant's admissions we reproduced earlier in FF 3 from the Reply Brief appear to belie any substantive argument that can be made regarding the argued subject matter among the independent claims 1, 11, 15, and 21 on appeal. Beyond the discussion of Schlonski's prior art workstation/printer/network environment in his prior art Figure 1, Schlonski says very little about the function of the workstations in his written description. In contrast to the general assertions made about Schlonski in the Brief and Reply Brief, reproduction of certain portions of this reference in FF 4 and 5 clearly indicates that the functionality of the programming resident within any given imaging devices is much more consistent with Appellant's own disclosed and claimed invention than Appellant appears to be willing to admit. The browser/server scenario for cloning purposes is already known in the art according to Schlonski's Paragraph [0016] we reproduced in the FF 5. The latter portion of Paragraph [0032] we reproduced in this FF as well indicates that an embedded webserver is found

in each selected printer, thus also impliedly indicating a web browser that is shown in Schlonski's Figures 4 to 6.

The subsequent paragraphs in Finding of Fact 5 make it very clear that the printer characterized in Schlonski as a template printer propagates or otherwise clones itself to other like printers on the network in a manner consistent with claimed invention. Again, this functionality is illustrated in Figures 4 and 5 of Schlonski. This reference also concludes in Paragraph [0040] we reproduced in FF 5 with the ability of a system administrator, through its own browser illustrated in Figures 4 through 6, to reconfigure that template printer itself. Once it becomes a reconfigured printer, it is capable of reconfiguring the remaining target printers on its network.

Therefore, it appears to us that the subject matter among independent claims 1, 11, 15, and 21 on appeal was either admitted by Appellant to be a part of the prior art in the Specification as filed, or admitted by Appellant to be in the prior art in FF 3, or taught in Schlonski as we noted in FF 4 and 5.

CONCLUSIONS OF LAW

Appellant has not shown that the Examiner erred in finding that the subject matter among independent claims 11, 15, and 21 on the appeal is anticipated by Schlonski and, correspondingly, that the subject matter of independent claim 1 on appeal was obvious over Schlonski in view of Carcerano.

DECISION

The decision of the Examiner rejecting various claims on appeal under 35 U.S.C. §§ 102 and 103 is affirmed. All claims on appeal, claims 1-22, are unpatentable.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

<u>AFFIRMED</u>

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